United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar

Monday, November 1, 2021 **Hearing Room 1675**

9:00 AM
2:00-00000 **Chapter**

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Docket 0

Tentative Ruling:

- NONE LISTED -

United States Bankruptcy Court
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Monday, November 1, 2021 **Hearing Room 1675**

9:00 AM

2:18-11475 Catherine Trinh **Chapter 11**

#1.00 EVIDENTIARY HEARING RE: Application for payment of final fees and/or expenses for Fredman Lieberman Pearl LLP, debtor's attorney, Period: 2/2/2018 to 1/28/2021, Fee: $635,953.00, Expenses: $10,302.61.
fr. 6/30/21, 9/9/21, 10/14/21

Docket 549

Tentative Ruling:

Updated tentative ruling as of 10/26/21. No tentative ruling will be issued for trial. Appearances are required on 11/1/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 6/29/21. Having reviewed the fee application, the court determines that it will have to conduct an evidentiary hearing and hear testimony on behalf of applicant as to the services that it performed for the estate that it claims are compensable as necessary, reasonable and beneficial to the estate. See The Traditional Cat Association, Inc. v. Gilbreath, 340 F.3d 829, 834 (9th Cir. 2003) (a court in reviewing a professional fee application could supplement the record through live testimony, making credibility judgments if necessary, additional declarations, or other documentation).
Preliminarily, applicant argues that the opposition of the objecting creditors should be disregarded on grounds that it was filed after the 14 day deadline before the original hearing on 3/31/21, but the court continued the hearing to 6/9/21, and then 6/30/21. The court overrules the objection that the opposition was late-filed since the continuance extended the deadlines for opposition pursuant to LBR 9013-1(m)(4), and the opposition was thus timely.

Also, as a preliminary matter, the objecting parties in their opposition argue that the fee application is premature on grounds that there are insufficient assets to pay administrative expenses, and in support of this contention, they cite cases ruling on interim fee applications. The court agrees with applicant in its reply to the opposition that its final fee application is not premature

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under LBR 2090-1(c) which provides that final fee applications of estate professionals must be filed and heard promptly as possible after plan confirmation. This also makes sense as applicant argues that the court and the parties are better equipped to assess and analyze a fee application when the case is fresh in their minds. More importantly, consistent with LBR 2090-1(c), it is important to liquidate the administrative expense claims in order for the confirmed plan to efficiently implemented so that the plan trustee here know what he has to pay under the plan, so he will be ready to make distributions to priority administrative expense creditors when funds are available without undue delay. Thus, the reliance of the objecting creditors on cases involving interim fee applications is misplaced since there is no reason to award interim fees if the estate does not have the funds and the fees will be reviewed on a final basis at or promtly after plan confirmation.

In the opposition, the objecting creditors argue that fees for certain categories of services performed by applicant were not reasonable, necessary or likely to benefit the estate when they were rendered. The creditors identify the objectionable categories of services as relating to plan and disclosure statement, claims administration and objections, Trinh and Voong adversary matters, employment and fee applications, and other services, including case administration, asset analysis, recovery and preservation and OUST compliance. In the reply, applicant argues that the services rendered were all reasonable.

The court believes that it is helpful to set out what it understands is the applicable legal standard for determining the reasonableness of fees of professionals employed by the estate pursuant to 11 U.S.C. 330. See In re Kudrave, No. 2:17-bk-17577-RK Chapter 11, 2019 WL 5688157 (Bankr. C.D. Cal. Nov. 1, 2019); In re Sarkis Investments Co., No. 2:13-bk-29180-RK Chapter 11 (Bankr. C.D. Cal. Sept. 5, 2019); In re Wells, No. 2:16-bk-18163-RK Chapter 7 (Bankr. C.D. Cal. May 31, 2019).

Under 11 U.S.C. § 330(a)(1), a bankruptcy court is authorized to award “reasonable compensation for actual, necessary services rendered by ... an attorney” and any paraprofessional person employed by an attorney. The court also has the power to award a reduced fee to a professional requesting

compensation under Section 330. 11 U.S.C. § 330(a)(2).

In determining fees allowed to a professional of a bankruptcy estate, the court must examine “all relevant factors, including: (A) the time spent on [the] services; (B) the rates charged for [the] services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of [the case]; (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in [nonbankruptcy cases].” 11 U.S.C. § 330(a)(3). The court also must not allow compensation for (i) unnecessary duplication of services, or (ii) services that were not: (I) Reasonably likely to benefit the debtor's estate, or (II) Necessary to the administration of the case.

Courts customarily apply a formula known as the ‘lodestar’ method to complement these statutory factors, multiplying a reasonable number of hours expended by a reasonable hourly rate to determine allowable compensation. Unsecured Creditors' Committee v. Puget Sound Plywood, Inc., 924 F.2d 955, 960 (9th Cir. 1991); In re Manoa Finance Co., Inc., 853 F.2d 687, 691 (9th Cir. 1988). In Manoa Finance Company, the Ninth Circuit held that a compensation award based on the lodestar method is “presumptively a reasonable fee.” 853 F.2d at 691. Although courts customarily begin a fee determination by applying the lodestar method—the “primary” fee calculation formula adopted by the Ninth Circuit—the lodestar is not exclusively applied, given the “uniqueness of bankruptcy proceedings.” Unsecured Creditors' Committee v. Puget Sound Plywood, Inc., 924 F.2d at 960. Further, a court may downwardly adjust a law firm's fees with reference to the work actually and reasonably performed, the value of that work to the estate, the performance of the firm's attorneys, the reasonable hourly rates for such work, and the prevailing community rates, among other factors. In re Morry Waksberg M.D., Inc., 692 Fed. Appx. 840, 842 (9th Cir. June 6, 2017)

(quoting In re Manoa Finance Co., Inc., 853 F.2d at 691).

When determining the amount of reasonable fees, the court's "examination ... should include the following questions: First, were the services authorized? Second, were the services necessary or beneficial to the administration of the estate at the time they were rendered? Third, are the services adequately documented? Fourth, are the fees requested reasonable, taking into consideration the factors set forth in § 330(a)(3)? Finally, ... the court must [also consider] whether the professional exercised reasonable billing judgment." In re Mednet, 251 B.R. 103, 108 (9th Cir. BAP 2000) (citation omitted).

Regarding the requirement that bankruptcy estate professionals exercise billing judgment, the Ninth Circuit has stated that employment authorization does "not give [the professional] free reign to run up a tab without considering the maximum probable recovery." Unsecured Creditors' Committee v. Puget Sound Plywood, Inc., 924 F.2d at 958. Before undertaking work on a bankruptcy matter, a professional is obligated to consider:

(a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959-960 (citation omitted). Moreover, " '[w]hen a cost benefit analysis indicates that the only parties who will likely benefit from [a service] are the trustee and his professionals,' the service is unwarranted and a court does not abuse its discretion in denying fees for those services." In re Mednet, 251 B.R. at 108-109 (quoting In re Riverside-Linden Investment Co., 925 F.2d 320, 321 (9th Cir. 1991)).

A bankruptcy court has broad discretion to determine the number of hours reasonably expended by a professional. Wechsler v. Macke International Trade, Inc. (In re Macke International Trade, Inc.), 370 B.R. 236, 254 (9th Cir. BAP 2007). "[E]ven where evidence supports [that] a particular number of

hours [were] worked, the court may give credit for fewer hours if the time claimed is 'excessive, redundant, or otherwise unnecessary.' " Id. (quoting Dawson v. Washington Mutual Bank, F.A. (In re Dawson), 390 F.3d 1139, 1152 (9th Cir. 2004)).

While "the applicant must demonstrate only that the services were 'reasonably likely' to benefit the estate at the time the services were rendered," In re Mednet, 251 B.R. at 108, "an attorney fee application in bankruptcy will be denied to the extent that the services rendered were for the benefit of the debtor and did not benefit the estate." In re Crown Oil, Inc., 257 B.R. 531, 540 (Bankr. D. Mont. 2000) (quoting Keate v. Miller (In re Kohl), 95 F.3d 713 (8th Cir. 1996)) (citations and internal quotation marks omitted). "This rule is based on the legislative history of the Bankruptcy Code section 330(a) and the unfairness of allowing the debtor to deplete the estate by pursuing its interests to the detriment of creditors." Id. (citations and internal quotation marks omitted). "The same unfairness occurs when a debtor's professionals seek to deplete the estate ... to the detriment of the estate and creditors." In re Crown Oil, Inc., 257 B.R. at 540.

Courts do not conclude that "only successful actions may be compensated under § 330. To the contrary, so long as there was a reasonable chance of success which outweighed the cost in pursuing the action, the fees relating thereto are compensable. Moreover, professionals must often perform significant work in making the determination whether a particular course of action could be successful. Such services are also compensable so long as, at the outset, it was not clear that success was remote." In re Crown Oil, Inc., 257 B.R. at 541 (quoting In re Jefsaba, Inc., 172 B.R. 786, 789 (Bankr. E.D. Pa. 1994)) (internal quotation marks omitted). "On the other hand, whether a reorganization is successful is a factor to be considered in determining whether a debtor's counsel's services provide a benefit to the estate." In re Crown Oil, Inc., 257 B.R. at 541 (citing In re MFlex Corp., 172 B.R. 854, 857 (Bankr. W.D. Tex. 1994) and In re Lederman Enterprises, Inc., 143 B.R. 772, 775 (D. Colo. 1992), affirmed, 997 F.2d 1321 (10th Cir. 1993)).

The normal method for assessing the reasonableness of attorneys' fees is the lodestar method, where the number of hours reasonably expended is

multiplied by a reasonable hourly rate. In re Eliapo, 468 F.3d 592, 598 (9th Cir. 2006) (citations omitted). “Ultimately, a reasonable number of hours equals the number of hours which could reasonably have been billed to a private client.” Gonzalez v. City of Maywood, 729 F.3d 1196, 1202 (9th Cir. 2013) (citations and internal quotation marks omitted). The court should disallow unreasonable attorneys’ fees using one of two methods. Id. at 1203. “First, the court may conduct an hour-by-hour analysis of the fee request and exclude those hours for which it would be unreasonable to compensate the prevailing party.” Id. (Internal quotations omitted). Second, the court has the authority to make across-the-board percentage cuts in the number of hours requested. Id.

The objecting creditors object to specific categories of fees saying that the services were unnecessary, unreasonable and not beneficial to the estate.

The largest category objected to is the category of fees for the plan and disclosure statement in the amount of $235,614.00, saying that applicant has not shown why the plan and disclosure statement process was so difficult and time-consuming and what changes needed to be made that were unforeseen and that the fees are for services which are duplicative of creditor Second Generation, Inc., which is also seeking a fee award for plan and disclosure statement services. However, the objecting creditors do not specify which fees are unreasonable or how much of the fees are unreasonable, or which ones are reasonable or how much they would consider would be reasonable. While applicant has the burden of showing the fees are reasonable, the objecting parties have at least to show specifically what is unreasonable.

With respect to claims administration and objections, the objecting parties object to the fees claimed by applicant in the amount of $36,341.50, saying that the fees are overstated for services for lots of "analyzing" and two motion disputes relating to the Kody Branch bankruptcy estate's motion to file a late claim and objecting to that estate's claim, which was later withdrawn. It appears to the court that at least some fees for these services are reasonably incurred, but the objecting creditors do not indicate what part of the fees is unreasonable, though it may be that they are asking for total disallowance of fees in this category. It isn't that clear.

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The objecting creditors object to the fees claimed by applicant for the Trinh and Voong adversary matters in the amount of $54,502.50 on grounds that nothing occurred in the Trinh adversary matter, except multiple stipulations for continuances of hearings and deadlines, and that debtor only acquiesced in her husband's allegations that the Las Flores property was mostly his and not the estate's asset and opposed Second Generation's intervention to recover the asset for the estate, which was successful. Here, the objection is apparently that the services did not benefit the estate and thus, not necessary, as opposed to whether the amounts were reasonable.

The objecting creditors oppose fees for preparing employment and fee applications in the amount of $30,338.50 on grounds that they "appear[ ] to be excessive." Obviously, employment applications and fee applications for estate professionals need to be prepared and should be compensated in some degree. In objecting to these fees, the objecting creditors do not specify what fees or how much of the fees are unreasonable or why, and what would be reasonable..

The objecting creditors oppose fees for other services, including case administratuion of $140,385.00, asset analysis, recovery and preservation of $47,267.00 and OUST conpliance of $22,036.00 on grounds that such fees "appear large in light of the described services and what [applicant] accomplished for the Chapter 11 estate." In objecting to these fees, the objecting creditors do not specify what fees or how much of the fees are unreasonable or why, and what would be reasonable.

At a prior hearing, the court expressed its concern, as an example, over the professional fees for preparing monthly operating reports over 36 months totaled $43,624.50 for the accountants who actually prepared the MORs and applicant which helped the accountants prepare the MORs billed $23,595.50 in fees for a grand total of $67,220.00, which appear excessive and unreasonable in light of the fact that the MORs should have been simple and straightforward as the income and expenses only involved debtor who was employed and had only wage income and her household expenses and each MOR is substantially similar that it should not have cost so much once a template for the first few MORs was established.

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The court also agrees that the fees for the various iterations of the plan and disclosure statement in the amount of $235,614.00 appear to be excessive for a case that was relatively simple and straightforward, two classes of creditors, secured creditor Second Generation, and the general unsecured creditors, and assets of an individual debtor with regular employment income and interests in several real estate assets and fractional interests in business entities. The plans and disclosure statements themselves are not complex documents as the idea behind the plans was debtor would put her net disposable income into the plan to pay creditors and her nonexempt assets would be liquidated to pay creditors. While there was one large general unsecured creditor, the Kody Branch bankruptcy estate, with a $55 million claim, there was not much litigation relating to that claim. The case was going to be essentially a liquidating reorganization in which the main dispute was whether the debtor herself or an independent plan trustee would liquidate the assets in the estate. Applicant will need to prove up the reasonableness of the fees for the services relating to plans and the disclosure statements, or otherwise, the fees for such services will be reduced. In re Budd Co., Inc., 550 B.R. 407 (Bankr. N.D. Ill. 2016); In re Sarkis Investments Co., Inc., supra.

The court's earlier tentative ruling that it was likely that there would be no more than a 10 percent "haircut" based on its preliminary review of the application was premature and now states that the reduction could be more than 10 percent upon ruling on the objections of the objecting creditors as well as the court's own concerns. The court is of the view that an evidentiary hearing is needed to take testimony from applicant's professionals regarding the services that they performed in order for applicant to meet its burden of demonstrating that its fees are reasonable under 11 U.S.C. 330 and to address the objections and concerns of the objecting creditors and the court. The court expects that an evidentiary hearing would take no more than a day.

Appearances are required on 6/30/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 4/26/21. The court is unable to complete its review of the application because the court has not completed its review for reasonableness under 11 U.S.C. 330 of the fees for services performed as

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reflected in the voluminous billing entries attached to the application consisting of over 300 pages. In conducting this review, the court will have to review matters on the docket, such as the pleadings filed by applicant and monthly operating reports, and fee applications of other professionals because it seems to the court that some of the fees are not reasonable. For example, the court has noted that fees of about $1,000 are requested for each monthly operating report prepared by applicant, and in addition, fees of about $1,000 are also billed for each operating report by other professionals working with applicant (i.e., accountant), so that fees of about $2,000 are billed for each monthly operating report filed in this case, which seems excessive to the court. The court expects to review the reasonableness of fees of all professionals on specific tasks to determine the reasonableness of all fees claimed. The court has concerns that there may be duplication of effort since multiple professionals are involved on the same tasks, such as relating to the appeals in debtor's state court litigation (i.e., work performed by multiple attorneys in the firm as well as special litigation counsel), and the general reasonableness of charges, such as excessive time spent on particular tasks, or unreasonable charges, that is, charging $50.00 each time an attorney looks at a document filed in the case, whether or not there is any action taken on the document (e.g., looking at orders approving stipulations, which require no action by applicant), which amount to hundreds, if not, thousands of dollars, without any specific benefit to the estate. Given these concerns over reasonableness, which at this time the court does not expect to be substantial, instead of conducting an exhaustive review of the voluminous billing entries submitted by applicant, after further review, the court may "impose a small reduction, no greater than 10 percent—a 'haircut'—based on its exercise of discretion and without a more specific explanation." See Moreno v. City of Sacramento, 534 F.3d 1106, 1112 (9th Cir. 2008). Appearances are required on 4/28/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Catherine Trinh Represented By

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
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Monday, November 1, 2021 **Hearing Room 1675**

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Alan W Forsley